

FURTHER REFLECTIONS ON THE ROLE OF RELIGION IN LAWYERING AND IN LIFE

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I. RELIGION AND THE PRACTICE OF LAW: A GROWING AREA OF LEGAL SCHOLARSHIP

One of the central issues addressed at the Conference of Religiously Affiliated Law Schools¹ involved the place of religion within legal education and the legal profession. In recent years, this issue has gained increasing prominence in legal scholarship, manifesting itself in relation to complex and profound questions.

The past year has seen a number of law journals dedicate symposia to different aspects of the relationship between religion and the practice of law. One such symposium, in the *Marquette Law Review*,² addressed the question: "What role, if any, should religious persuasions have in a secular court?"³ Although this symposium focused on judges, it continued a broader debate that, in the words of Professor Steven Smith, "centers on the claim that it is improper, or perhaps even unconstitutional, for government officials such as legislators and judges, and possibly for citizens, to rely on their religious convictions in making political decisions."⁴

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This Essay expands on some of my remarks at the Association of Religiously Affiliated Law Schools, Second Conference, Regent University School of Law, September 12-14, 1998. I thank Dean Howard Eisenberg of Marquette University Law School for inviting me to participate in the conference, the editors of Regent University Law Review for soliciting this Essay, and Fraida Liba for helping me develop many of my thoughts.

¹ Association of Religiously Affiliated Law Schools, Second Conference, Regent University Law School, September 12-14, 1998.

² Symposium, *Religion and the Judicial Process: Legal Ethical, and Empirical Dimensions*, 81 MARQ. L. REV. 177 (1998).

³ Kurt D. Dykstra, *Foreword to Symposium, Religion and the Judicial Process: Legal Ethical, and Empirical Dimensions*, 81 MARQ. L. REV. 177 at I (1998).

⁴ Steven D. Smith, *Legal Discourse and the De Facto Disestablishment*, 81 MARQ L. REV. 203, 203 (1998). Smith credits Kent Greenawalt with initiating this debate, and notes that "the debate has become voluminous." See *id.* at n.1 (citing KENT GREENAWALT, RELIGIOUS CONVICTIONS AND POLITICAL CHOICE (1988)).

For other discussions of the place of religion in public spheres, including law and politics, see STEPHEN L. CARTER, THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGION (1993); KENT GREENAWALT, PRIVATE CONSCIENCES AND PUBLIC REASONS (1995); MICHAEL J. PERRY, A REVIEW OF RELIGION IN POLITICS: CONSTITUTIONAL AND MORAL PERSPECTIVES (1997); Frederick Schauer, *May Officials Think*

Other scholars have extended the debate to the realm of legal ethics. For example, Professor Bruce Green has discussed the "tension between professional norms and personal moral values both for the legal profession and for individual lawyers," while "explor[ing] the extent to which lawyers actually may act on the basis of personal moral and religious beliefs while also claiming to conform with professional norms."⁵ Thus, Professor Green addressed the political/constitutional question noted by Professor Smith but related it to more personal decisions that arise in the practice of law, involving questions that fall in the category of what Professor Russell Pearce has termed "religious layering."⁶

The development of the "religious layering movement" formed the basis of another symposium, published this year by the *Fordham Law Review*.⁷ The symposium memorialized "The Relevance of Religion to a Lawyer's Work: An Interfaith Conference," and aimed to "develop . . . a scholarly literature which would address systematically the range of theoretical issues raised by the existing religious lawyering literature."⁸ Subsequently, the *St. John's Law Review* dedicated an issue of *The Catholic Lawyer* to a symposium on "Layering and Personal Values,"⁹ which looked to "recogniz[e] the important role that religious and other ethical values can play in the lives of lawyers."¹⁰

At the Conference of Religiously Affiliated Law Schools, I had the opportunity to speak about my own involvement in some of the efforts of scholars to address the place of religion in legal education and the practice of law, which I have been asked to further discuss here. In Part II of this Essay, I take this opportunity to develop briefly some of the thoughts I mentioned at the conference, reflecting on both what I have written in the past and the responses of others to similar questions.

Religiously?, 27 WM. & MARY L. REV. 1075 (1986); and Ruti Teitel, *A Critique of Religion as Politics in the Public Sphere*, 78 CORNELL L. REV. 747 (1993).

⁵ Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19, 21 (1997). Professor Green argues that "particular beliefs, especially highly specific ones, often must be excluded from central aspects of lawyers' professional work." *Id.*

⁶ See Russell G. Pearce, *Forward: The Religious Layering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075 (1998).

⁷ See Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 FORDHAM L. REV. 1075 (1988).

⁸ Pearce, *supra* note 6, at 1077.

⁹ See Symposium, *Layering and Personal Values*, 38 CATH. LAW. 145 (1988).

¹⁰ Samuel J. Levine, *Introductory Note: Symposium on Layering and Personal Values—Responding to the Problems of Ethical Schizophrenia*, 38 CATH. LAW. 145, 149 (1988).

II. RELIGION, PROFESSION, AND LIFE: THE IMPERATIVE FOR COMMON ASPIRATIONS

Professor Green describes his article as “examining in detail how the legal profession’s norms both accommodate and limit lawyers’ reliance on their own moral and religious understandings.”¹¹ Thus, he continues, the article “challenges both those who assume that personal and professional values generally can be integrated and those who assume that professional norms eclipse personal conscience.”¹² As an example of the first group he challenges, Professor Green cites an essay I wrote¹³ as part of a 1996 Symposium, *Faith and The Law*, published by *Texas Tech Law Review*,¹⁴ in which I described many positive spiritual aspects of my work as a prosecutor.¹⁵ While I do not presently intend to respond directly to the substance of Professor Green’s challenge, I would like to clarify and perhaps develop further the intent of my essay.

Both the title of my essay, “The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession,”¹⁶ and the substance of the essay aimed to demonstrate my belief in the imperative to integrate my personal and professional values. I submit, however, that this belief is not identical to the assumption that personal and professional goals can always be integrated, obviating the need to sacrifice, or at least compromise, one of the two. I do believe, however, that personal values must be integrated into all areas of life, and therefore, to the extent that professional goals conflict irreconcilably with my religious values, it is the professional goals that must be sacrificed or compromised.

As I explained, a Jewish individual may properly engage in numerous activities and pursuits in life, professional or otherwise, of which the legal profession represented my own choice of professional pursuit. Thus, I described the potential, and indeed the desirability for many individuals, of living a “broad life . . . in which religious ideals and professional goals not only coexist but actually complement each other, motivating the very same actions.”¹⁷ Moreover, in addition to offering this perspective on professional pursuits, I noted Maimonides’ teachings that all of life’s activities, when conducted with the proper intent and in accordance with religious ideals can—and should be used to serve God.¹⁸

¹¹ Green, *supra* note 5, at 20-21.

¹² *Id.* at 21.

¹³ See Samuel J. Levine, *The Broad Life of the Jewish Lawyer: Integrating Spirituality, Scholarship and Profession*, 27 TEX. TECH. L. REV. 1199 (1996).

¹⁴ See Symposium, *Faith and the Law*, 27 TEX. TECH. L. REV. 911, 911 (1996).

¹⁵ Green, *supra* note 5, at 21 n.7 (citing Levine, *supra* note 13, at 1207).

¹⁶ See Levine, *supra* note 13.

¹⁷ *Id.* at 1209.

¹⁸ See *id.* at 1205 (citing MISHNE TORAH, Laws of De’oth 3:2-3).

This approach to life, then, pictures religious ideals and obligations as the center around which all of life's pursuits and activities revolve.¹⁹ As a result, integration of religious and professional values does not involve an attempt to reconcile competing ideals. There is no competition because religious values are paramount, and therefore all other values are acceptable only to the extent that they can be reconciled with religious values. Religious values, on the other hand, need not and may not be altered or diminished to conform with another set of values.

Such an attitude may place broad limitations on the range of acceptable and desirable professional activities. In citing my essay, Professor Green quoted my statement that "[a]s a prosecutor, I thus have the obligation and opportunity to integrate many of my religious and professional goals."²⁰ While I continue to view my prosecutorial work in a positive spiritual light, again I did necessarily intend to imply an "assum[ption] that personal and professional values generally can be integrated,"²¹ or even that prosecuting criminals is generally likely to conform with religious values.

Instead, the intent of my essay was more descriptive than normative in nature, as I was responding to the editors' request for a "personal narrative . . . describ[ing] how [my] religious beliefs oblige [me] to practice the profession of law . . ."²² As I noted in concluding my essay, "there are many areas of the legal profession that offer lawyers opportunities to integrate their professional lives with their spiritual lives."²³ Although I focused on lawyers, numerous professional activities offer similar opportunities. As the great eighteenth century ethicist, Rabbi Moshe Chaim Luzzatto (Ramchal), noted, each individual has a unique path in serving God.²⁴ Regardless of the particular path chosen, however, Ramchal notes that all individuals should share the common aspiration and obligation expressed in the Biblical imperative, "In all your ways know Him and He will straighten your paths."²⁵

My approach to the relationship between lawyering and my religious values, then, is similar to that of William Stringfellow, as depicted

¹⁹ This implied analogy to a circle alludes to the more extensive discussion by Rabbi Yitzchak Hutner. See *id.* at 1204 (citing YITZCHAK HUTNER, PACHAD YITZCHOK, LETTERS AND WRITINGS, NO. 94.(1991)).

²⁰ Green, *supra* note 5, at 21 n.7 (quoting Levine, *supra* note 13, at 1207).

²¹ *Id.* at 21.

²² Thomas E. Baker & Timothy W. Floyd, *A Symposium Précis*, 27 TEX. TECH. L. REV. 911, 911 (1996).

²³ Levine, *supra* note 13, at 1210.

²⁴ MOSES C. LUZZATTO, MESILLAT YESHARIM 338 (Shraga Silverstien, trans., New York, Feldheim, 1966).

²⁵ *Id.* at 338-39 (quoting *Proverbs* 3:6).

by Professor Thomas Shaffer. Professor Shaffer, whom Professor Pearce has called "the father of the religious lawyering movement,"²⁶ observed that Stringfellow "said he avoided thinking of himself as a 'professional.'"²⁷ "He was, he said, a biblical person who worked as a lawyer."²⁸ Thus, although he was a lawyer by profession, Stringfellow apparently did not picture himself primarily through his role as a lawyer. Instead, he seemed to view his spiritual values as the underlying and overriding motivation behind all of his actions, acknowledging that his life's journey had led him to actualize those values by working as a lawyer.

Likewise, I was pleased to find that my work as a prosecutor was consistent with my religious motivations; indeed, had I found my work irreconcilable with my religious goals, I would not have been able to continue in that role. Similar to the outlook of Stringfellow and a number of the participants at the Conference of Religiously Affiliated Law Schools, I view myself as a religious individual, who has worked as a prosecutor and currently works as a law professor.

In the end, then, the approach I describe in my *Texas Tech Law Review* essay may say more about the relationship between religion and life as a whole than about the relationship between religion and one particular area of my own life, working as a lawyer. This approach emphasizes the need for each individual to find and identify a path in life through which to serve God. Significantly, as Ramchal notes, this path can be determined only by acknowledging each individual's unique vocation, inner nature, and spiritual struggles.²⁹

Finally, it should be understood that such an approach places much trust in and concurrent responsibility on individuals to assess themselves honestly and fairly, including recognizing their own strengths and weaknesses. After all, if these individuals are truly interested in serving God through all actions, including professional activities, they must be prepared to engage in honest self-reflection to fairly assess what God expects of them.

Perhaps the best illustration of this approach is found in the following short Chasidic tale: "Before Rabbi Zusia died, he said: 'When I shall face the celestial tribunal, I shall not be asked why I was not Abraham, Jacob or Moses. I shall be asked why I was not Zusia.'"³⁰ It is incumbent upon each individual to set ambitious yet realistic aspirations, based on individual potential in different areas of life, in an effort to ac-

²⁶ Pearce, *supra* note 6, at 1078.

²⁷ Thomas L. Shaffer, *On Living One Way in Town and Another Way at Home*, 31 VAL. U. L. REV. 879, 884 (1997).

²⁸ *Id.*

²⁹ LUZZATO, *supra* note 24, at 336-39.

³⁰ ELIE WEISEL, SOULS ON FIRE 120 (Marion Weisel trans., 1972).

knowledge God in all of life's paths. It is my hope that many of those, including myself, who have presented positive reports on their own attempts to integrate their work as lawyers with their overriding religious values, will in the future have the opportunity to continue working towards fulfilling their spiritual potentials in this path of life.